IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT NASHVILLE

FILED

June 24, 1997

Cecil W. Crowson
Appellate Court Clerk

BILLIE DOVETA SMITHERS, Plaintiff/Appellee	)	PUTNAM CIRCUIT
	)	NO. 0S01-9609-CV-00182
v.	)	(No. NJ-5584 below)
RUSSELL STOVER CANDIES, INC., Defendants/Appellants	)	HON. JOHN J. MADDUX, JR., JUDGE

FOR THE APPELLANT:

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FOR THE APPELLEES:

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MEMORANDUM OPINION

MEMBERS OF PANEL:

FRANK F. DROWOTA,III, ASSOCIATE JUSTICE, SUPREME COURT
WILLIAM H. INMAN, SENIOR JUDGE
WILLIAM S. RUSSELL, RETIRED JUDGE

AFFIRMED RUSSELL, SP. J.

This appeal of a workers' compensation case had been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court pursuant to Tennessee Code Annotated Section 50-6-225 (e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

Billie D. Smithers, a 33 year old married woman, injured her back at work on April 22, 1993, by lifting tubs of candy. The injury was promptly reported, initially manifesting itself by pelvic pain and vaginal bleeding. Several days later she began experiencing low back pain and leg numbness. She in time was seen by a multiplicity of physicians. At the conclusion of the trial of this case it was the judgment of the trial court that Mrs. Smithers suffered a back injury in the course and scope of her employment by the defendant, and she retained a 12% vocational impairment to the body as a whole.

The appellants contend that the evidence preponderates against the trial judge's findings of causation, permanency of injury and extent of vocational impairment.

Our duty is to review the findings of fact by the trial court de novo upon the record, accompanied by a presumption of the correctness of the finding. We are required to overrule the findings of the trial court if and when we find the preponderance

of the evidence to be otherwise. Tennessee Code Annotated Section 50-6-225 (e)(2). We have carefully reviewed each of the issues raised and find that all of them are adequately supported by the evidence.

Dr. Harry Stuber diagnosed her as having musculoskeletal low back pain, consistent with her work injury history. She saw Dr. James B. Talmage, and he diagnosed her as having a pelvic infection.

She next saw Dr. Randy Gaw, M.D., a neurologist, and on August 27, 1993, he placed her under lifting and standing restrictions and allowed her to return to work on August 30, 1993.

Dr. Gaw referred the employee to Dr. Harold Smith, M.D. a neurosurgeon, who saw Mrs. Smithers on October 13, 1993. He reported that he found nothing to explain her symptoms. He testified in his deposition that it was possible that she incurred a muscle strain to her back on April 22, 1993.

The defendant insurance carrier sent her to Dr. Robert Weiss, M.D., Nashville neurosurgeon, on November 16, 1994. His was a normal study; but he admitted in his deposition testimony that he would not want to deny that Mrs. Smithers was experiencing the pain that she claimed.

She saw Dr. Max Atnip, D.C., a chiropractor, during September of 1994. He diagnosed chronic lumbo-sacro and sacro-iliac strain/sprain, and set her anatomical impairment at 2%-3%.

The employee returned to work on September 30, 1993, on light duty at a reduced rate of pay. She subsequently quit that job. She has attempted since that time to work for five different employers, and she testified that her back injury caused her to discontinue working. The trial judge found that as a result of the subject injury that the employee has not been able to do any type of work because of her problem with pain. The trial judge expressly found her to be "a very credible witness". He also discussed in detail the testimonies of the various doctors who saw Mrs. Smithers, and announced that he was basing the court's decision upon all of the evidence, including lay and expert testimony, the employee's age, her education, her skills and training, local job opportunities and the capacity to work and types of employment available to her in her condition. His judgment was that she sustained a 12% permanent partial disability to the body as a whole.

We recognize that the evidence of causation and permanent impairment is contradictory, and that there is evidence that Mrs. Smithers suffers no permanent anatomical impairment. Conversely, there is clear evidence supporting the judgment of the trial judge. When a trial judge has two equally well qualified experts before the court, the trial judge has the discretion to accept the opinion of one medical expert over another in a workers' compensation case. Johnson v. Midwesco, Inc., 801 S.W. 2d 804 (Tenn. 1990).

We cannot say that the evidence preponderates against the verdict. Consequently, the judgment of trial court is affirmed. Costs on appeal are taxed to the appellants.

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WILLIAM S. RUSSELL, SPECIAL JUDGE

CONCUR:

_____
FRANK F. DROWOTA, III,
ASSOCIATE JUSTICE

_____
WILLIAM H. INMAN, SENIOR JUDGE

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

BILLIE DOVETA SMITHERS,	}	PUTNAM CIRCUIT
	}	No. NJ-5584 Below
Plaintiff/Appellee	}	
	}	Hon. John J. Maddux, Jr.,
vs.	}	Judge
	}	
RUSSELL STOVER CANDIES, INC.,	}	No. 01S01-9609-CV-00182
	}	
Defendant/Appellant	}	AFFIRMED.

JUDGMENT ORDER

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference.

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs will be paid by Defendants/Appellants, Russell Stover Candies, Inc., and TIG Premier Insurance Company as Principals and their Surety, for which execution may issue if necessary.

IT IS SO ORDERED on June 24, 1997.

PER CURIAM